1.

The complaint in this action was filed by leave of Court granted January 3, 1928 and thereafter in March 1928, the defendant, State of Kansas, filed its answer and joined issue with the complainant. Thereafter the Court appointed the Honorable M. S. Atwood as stenographic commissioner to take testimony in the cause and the taking of such testimony has proceeded and now consists of 36 volumes embracing 6,361 typewritten pages and 316 exhibits.

The last testimony offered was submitted on December 21, 1939, at which time the parties rested.

Since December 21, 1939, the parties hereto have been engaged in efforts to effect a settlement of their controversies, which efforts have not as yet been successful so that it becomes advisable that the cause be submitted to the Court for its determination.

2.

The cause involves a controversy over the claims of the parties to rights in and to the waters of the Arkansas River, an interstate stream, and the enjoining of Defendants from further prosecution of actions in the inferior courts, and other matters as more fully appears by the Bill and Answer.

3.

Complainant has been informed that whereas at the time said cause was begun it was the practice of the Court to hear the same upon the Bill, Answer, and printed record of the testimony taken before the stenographic commissioner, it is now the prevailing practice for the Court to appoint a special master to whom the cause is referred to consider the testimony and make his report with his findings of facts, conclusions of law and a recommended

decree, opportunity being given for counsel to except to the findings and conclusions and to present briefs and oral arguments upon such exceptions.

4.

The evidence as now presented consists largely of expert testimony on engineering and scientific subjects. By reason of its nature such evidence is difficult to abstract or condense and at the same time retain the full benefit of the engineering and scientific investigations.

By reason of the nature of the case, the length of the record as now existing and the nature of the evidence presented, it would seem necessary to have this Honorable Court refer the matter to a Special Master with full powers to review the evidence heretofore presented, to hear and consider such further evidence as may be presented by either of the parties, or which he himself may desire, and to present findings of facts, conclusions of law and a proposed decree for such revision, amendment, adoption or consideration as the Court may see fit to make.

5.

Complainant further respectfully requests that the parties hereto be given permission to agree upon such person or persons experienced and qualified in Irrigation Law, whose name or names may be submitted to the Court for consideration for approval and appointment as Special Master.

6.

In support of this motion the State of Colorado presents herewith the Affidavit of its Attorney General, Gail L. Ireland.

Wherefore the State of Colorado, complainant above named, moves the Court that it appoint a Special Master in this cause with the powers heretofore suggested in this motion or such other powers as to the Court may seem proper.

GAIL L. IRELAND,
Attorney General of the State of Colorado,
State Capitol,
Denver, Colorado,

A. W. MCHENDRIE,
Pueblo, Colorado,

HENRY C. VIDAL,
Equitable Bldg.,
Denver, Colorado,

ARTHUR C. GORDON,
Lamar, Colorado,

JEAN S. BREITENSTEIN,
Symes Bldg.,
Denver, Colorado,
Attorneys for Complainant.

AFFIDAVIT.

STATE OF COLORADO }
City and County of Denver } ss.

Gail L. Ireland, being first duly sworn, upon oath deposes and says that he is the duly elected, qualified and acting Attorney General of the State of Colorado, and as such in his official capacity and by the direction of the Honorable Ralph L. Carr, Governor of the State of Colorado represents and appears for the State of Colorado in this cause, and that he makes this affidavit in support of the motion for the appointment of a Special Master presented herewith.

1. Since issues have been joined in this cause, the evidence as presented to and transcribed by the Hon. M. S. Atwood, Stenographic Commissioner appointed by this Court, consists of 36 volumes, containing 6,361 typewritten pages and 316 exhibits,—such evidence being largely of an engineering and scientific nature relating to agricultural, climatological, and hydrological data, and to the respective needs of the two states for water of the Arkansas River for agricultural, domestic, and other purposes.

2. The said evidence heretofore presented to the Stenographic Commissioner relates to conditions in the basin of the Arkansas River as existing up to or about the year 1932. Since 1932 there have been for several years in the basin of the Arkansas River severe and prolonged drouths. No evidence has been introduced in this case as to the effects of such drouth conditions upon the supplies of or the demands for the water of the Arkansas River, but such evidence is necessary to a proper determination of the issues in the case.

3. On or about the year 1933 an opportunity presented itself to secure the construction by the United States of a combined flood control and conservation reservoir on the

Arkansas River in Colorado, about 58 miles upstream from the Kansas-Colorado boundary line, then known and described as The Caddoa Reservoir. On or about the year 1940 contracts were awarded for the construction of said reservoir (now known as the John Martin Reservoir Project) and work has proceeded thereon until the project as a whole is about 40% completed and the dam and appurtenant works are about 26% completed. No evidence has been presented in this case as to the effect which the storage of water in said reservoir will have upon the regimen of stream flow and the supplies thereof available for use, but such evidence is necessary to a proper determination of the issues in the case.

Dated at Denver, Colorado, this 27th day of March, A. D. 1942.

GAIL L. IRELAND

Subscribed and sworn to before me this 27th day of March, A. D. 1942.

Witness my hand and official seal.

My commission expires July 6, 1942.

ANN G. LANDY,
Notary Public.

The original of this affidavit has been filed with the Clerk of the Supreme Court of the United States.